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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MICHAEL ALEXANDER FRIEDMANN,

12 Plaintiff,

13 v.

14 THE STATE OF WASHINGTON, et al.,

15 Defendants.

Case No. 09-5761RJB

ORDER ON PLAINTIFF'S
MOTION FOR DEFAULT

16 This matter comes before the Court on Plaintiff's Motion for Default (Dkt. 40). The
17 Court has considered the relevant documents and the remainder of the file herein.

18 **I. BACKGROUND**

19 On December 23, 2009, the Plaintiff filed a complaint against the Defendants alleging
20 numerous causes of action, including false arrest, false imprisonment, violations of 42 U.S.C. §
21 1983, and negligence. Dkt. 3. On February 17, 2010, the Plaintiff filed a document entitled
22 "Plaintiff's Response to Motion and Motion for Entry of Default" (Dkt. 40).

23 **II. DISCUSSION**

24 The Court is uncertain as to the intent of the Plaintiff in filing the above mentioned
25 document. It appears that the Plaintiff misconstrued the Defendants' Answer to his Complaint as
26 a motion. The Plaintiff need not respond to an Answer. An answer is merely a response to a
27 complaint that lays out, among other things, defenses, admissions, and denials as required by
28 Federal Rules of Civil Procedure ("Fed.R.Civ.P.") Rule 8(b). There is no requirement that the

1 Plaintiff respond to the Defendants' Answer unless the court orders one in accordance with
2 Fed.R.Civ.P. Rule 7(a)(7).

3 It also appears that the Plaintiff attempted to file a "Motion for Entry of Default." The
4 relevant rule, Fed.R.Civ.P. Rule 55(a), provides that

5 When a party against whom a judgment for affirmative relief is sought has failed
6 to plead or otherwise defend, and that failure is shown by affidavit or otherwise,
the clerk must enter the party's default.

7 However, in this case, the Defendants have plead and defended by submitting an Answer to
8 Plaintiff's Complaint. *See* Dkt. 39. Therefore, entry of default would be inappropriate in this
9 case.

10 Finally, the Plaintiff uses a different term in the body of his document to describe his
11 request. In the caption of the document, he states "Motion for Entry of Default," but in the body
12 of the document, he states "Motion to Dismiss." Dkt. 40. These are entirely two different
13 requests of the Court. A motion for entry of default is governed by Fed.R.Civ.P. Rule 55, while
14 a motion to dismiss is typically governed by Fed.R.Civ.P. Rule 12(b). Moreover, a motion to
15 dismiss is usually brought by defendants, not plaintiffs, since it disposes of a plaintiff's case.
16 Plaintiff may have intended the document to be a motion for judgment on the pleadings, which is
17 governed by Fed.R.Civ.P. Rule 12(c). However, Plaintiff did not note his motion in a manner
18 that would be in accordance with a dispositive motion. *See* Western District of Washington
19 Local Rule CR 7(d)(3). Plaintiff noted his motion on the same day that it was filed, which
20 indicates that he intended this motion to be a motion for default, which is unavailing in this case,
21 since the Defendants filed an Answer.

22 The Plaintiff files two other motions which appear to be intended to be replies to the
23 Defendants' response to the motion for entry of default. *See* Dkt. 50 and 51. First, as a
24 procedural matter, a motion for entry of default ordinarily does not require a response or reply.
25 However, under these circumstances, the Court will address the response filed by the Defendants
26 and the replies filed by Plaintiff.

27 Defendants' responds to Plaintiff's Motion for Entry of Default by asserting that they
28 have answered the Plaintiff's complaint. Dkt. 47, p. 2. Defendants further argue that if the

1 Court does not accept the filing of their Answer, that the Plaintiff's motion should still be denied
2 because the Plaintiff has not properly served the Defendants in accordance with Local Rule CR
3 55. Dkt. 47, p. 3. Finally, the Defendants argue that if the Court finds that there was no answer
4 and that service of the motion for entry of default was proper, that the Plaintiff still failed to
5 comply with Local Rule CR 55 by not giving notice of his intention to move for default. Dkt.
6 47, p. 4.

7 Plaintiff responds by first arguing that the Defendants filed their notice of appearance and
8 answer in the wrong venue. Dkt. 50, p. 2. Plaintiff contends that since the caption of the
9 Defendants' answer states "United States District Court Western District of Washington at
10 Seattle," the Defendants filed in the wrong venue. However, typographical errors are not
11 dispositive. Upon the Court's review of the records, the Defendants did submit their Notice of
12 Appearance and Answer within the time required, at the proper venue, and in the proper
13 timeframe.

14 Plaintiff next argues that the Defendants' response does not bear the signature of the
15 attorney of record. Dkt. 50, p. 3. However, the Western District of Washington Electronic
16 Filing Procedures for Civil and Criminal Cases instructions allows for exactly what the
17 Defendants did in this case, which is to merely type in the name of the attorney of record.

18 Since the Court has determined that the Defendants have properly answered, the
19 remaining arguments made by Defendants and Plaintiff will not be addressed. To the extent that
20 the Plaintiff's motion is one for default or for entry of default, it should be denied since the
21 Defendants have timely answered. The Plaintiff also appears to renew his motion for entry of
22 default in his responses. *See* Dkt. 50 and 51. These motions should be denied for the same
23 aforementioned reasons.

24 Plaintiff also seeks to strike the Defendants' Response (Dkt. 47), and Defendants' two
25 errata filings (Dkt. 43, 44). Fed.R.Civ.P. Rule 12(f) provides that the Court may strike from a
26 pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.
27 The Plaintiff asserts that since the Defendants' Notice of Appearance and Answer were not
28 properly filed and signed, that the Defendants' response and two errata should be stricken. First,

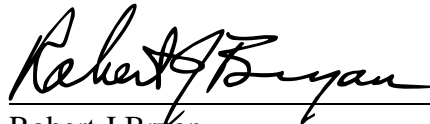
1 the Court has already determined that the Notice of Appearance and the Answer were filed
2 properly, regardless of the typographical error. Second, filing of an errata is an administrative
3 act to correct a mistake on a filed document. The Defendants are allowed to correct
4 typographical errors. Finally, the Plaintiff has not shown that the documents which he seeks
5 to strike were an insufficient defense or any redundant, immaterial, impertinent, or scandalous
6 matter. Therefore, the Plaintiff's motions to strike should be denied.

7 **III. ORDER**

8 The Court does hereby find and ORDER:

- 9 (1) Plaintiff's Motions for Entry of Default (Dkt. 40, 50, and 51) are **DENIED**;
10 (2) Plaintiff's Motions to Strike (Dkt. 50, 52, and 53) are **DENIED**; and
11 (3) The Clerk is directed to send uncertified copies of this Order to all counsel of record
12 and to any party appearing *pro se* at said party's last known address.

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14 DATED this 5th day of March, 2010.

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17 Robert J Bryan
18 United States District Judge
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